

Exhibit 331

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.
v. Dey, Inc., et al., Civil Action No. 05-11084-PBS

**Exhibit to the August 28, 2009 Declaration of Sarah L. Reid in Support
of Dey's Opposition to Plaintiffs' Motion for Partial Summary Judgment**

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1 NO. GV002327
2 THE STATE OF TEXAS) IN THE DISTRICT COURT
3 EX REL.)
4 VEN-A-CARE OF THE)
5 FLORIDA KEYS, INC.,)
6 PLAINTIFF(S),)
7 VS.) TRAVIS COUNTY, TEXAS
8)
9 DEY, INC.; ROXANE)
10 LABORATORIES, INC., WARRICK)
11 PHARMACEUTICALS CORPORATION,)
12 SCHERING CORPORATION,)
13 SCHERING-PLough CORPORATION,)
14 LIPHA, S.A., MERCK-LIPHA,)
15 S.A., MERCK, KGAA, AND EMD)
16 PHARMACEUTICALS, INC.,)
17 DEFENDANT(S).) 53RD JUDICIAL DISTRICT

18 *****

19 ORAL AND VIDEOTAPED DEPOSITION OF
20 EVE FAGRELL GMEINER
21 JANUARY 20TH, 2003

22 *****

23 ORAL AND VIDEOTAPED DEPOSITION OF EVE FAGRELL
24 GMEINER, PRODUCED AS A WITNESS AT THE INSTANCE OF THE
25 PLAINTIFF(S), AND DULY SWORN, WAS TAKEN IN THE
ABOVE-STYLED AND NUMBERED CAUSE ON JANUARY 20TH, 2003,
FROM 10:06 A.M. TO 5:36 P.M., BEFORE CYNTHIA VOHLKEN,
CSR IN AND FOR THE STATE OF TEXAS, REPORTED BY MACHINE
SHORTHAND, AT THE DOUBLETREE HOTEL, 1 DOUBLETREE
DRIVE, ROHNERT PARK, CALIFORNIA PURSUANT TO THE TEXAS
RULES OF CIVIL PROCEDURE.

1 30TH, 1995 TWO-PAGE DOCUMENT BEFORE TODAY?

2 A. I DON'T THINK SO.

3 MR. FLECKMAN: HOLD ON JUST ONE SECOND,

4 RAY. THE SECOND PAGE JUST CLARIFY FOR ME BECAUSE I
5 HAVE AN FDB 940. IS THAT WHAT YOU'RE REFERRING TO AS
6 THE SECOND PAGE?

7 MR. WINTER: MINE HAS A BATES STAMP ON
8 IT OF FDB 000918.

9 MR. FLECKMAN: 918.

10 MR. WINTER: YES.

11 MR. FLECKMAN: THANK YOU. AND I TAKE IT
12 THIS IS THE FAX TO FIRST DATABANK?

13 MR. WINTER: THAT'S WHAT IT APPEARS TO
14 BE, YES.

15 MR. FLECKMAN: OKAY. AND YOU'VE
16 COMPILED A DOCUMENT BECAUSE IT WAS PRODUCED BY FDB,
17 OBVIOUSLY, RIGHT?

18 MR. WINTER: RIGHT.

19 MR. FLECKMAN: OKAY. GO AHEAD .

20 A. WHAT DID YOU ASK ME?

21 Q. (BY MR. WINTER) MY QUESTION WAS BEFORE TODAY
22 HAVE YOU EVER SEEN THIS MAY 30TH, 1995 MEMORANDUM FROM
23 MS. BURNHAM TO SALES AND MARKETING OR THE ATTACHED FAX
24 OR -- OR TRANSMITTAL THAT WENT TO BETH RADER AT
25 PRICEALERT AND PHARMACY BLUEBOOK UPDATE?

1 A. I DON'T BELIEVE I HAVE, NO. IT DOES NOT LOOK
2 FAMILIAR.

3 Q. AND -- AND MORE SPECIFICALLY YOU DON'T RECALL
4 DISCOVERING THIS IN 1997 WHEN YOU WERE ASKED TO
5 RESEARCH DEY'S WAC HISTORY?

6 A. HUH-UH.

7 Q. YOU TESTIFIED EARLIER THAT WACS AND AWPS
8 GENERALLY WENT DOWN IN THE GENERIC MARKET IN YOUR
9 EXPERIENCE.

10 A. PRICING WENT DOWN.

11 Q. THAT THE PRICING FOR --

12 A. YEAH.

13 Q. AND --

14 A. I THINK WAC WENT DOWN AND AWP ENDED UP
15 STAYING PRETTY FLAT. I DON'T KNOW.

16 Q. DOES ANYTHING ABOUT THIS MEMO DATED MAY 30TH,
17 1985 STAND OUT TO YOU AS UNUSUAL?

18 A. NO.

19 Q. DOES IT STRIKE YOU AS ODD THAT THE WAC PRICE
20 IS BEING RAISED --

21 A. I DON'T SEE --

22 Q. -- FOR ALBUTEROL?

23 A. -- THAT IT'S BEING RAISED.

24 MR. FLECKMAN: I'M SORRY, REPEAT THE
25 ANSWER.

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1 A. YES, I DO.

2 Q. AND ANOTHER OF THOSE WAS -- WAS -- THIS WILL
3 COME TO ME IN JUST A SECOND, BUT ROSS UHL, WHO WAS
4 ALSO A MEMBER OF THE SALES FORCE AND YOU RECOGNIZE
5 THAT NAME, CORRECT?

6 A. YES.

7 Q. NOW, NEITHER OF THOSE MEN RECALLED RECEIVING
8 THIS MEMORANDUM, WHICH SUPPOSEDLY WAS DIRECTED TO ALL
9 OF THE SALES AND MARKETING FORCE. AND YOU DON'T
10 RECALL, I UNDERSTAND FROM YOUR PREVIOUS TESTIMONY THIS
11 AFTERNOON, YOU DO NOT RECALL RECEIVING THIS
12 MEMORANDUM.

13 A. THAT IS CORRECT.

14 Q. AND UP UNTIL THE TIME IT WAS SHOWN TO YOU IN
15 THIS DEPOSITION YOU HAD NEVER SEEN THIS MEMORANDUM; IS
16 THAT CORRECT?

17 A. THAT'S CORRECT.

18 Q. NOW, DO YOU SEE WHERE -- LET'S SEE. OKAY.
19 WITHDRAW THAT QUESTION. SET THAT ONE ASIDE.
20 TAKE A LOOK, IF YOU WOULD, AT EXHIBIT
21 627.

22 A. YES.

23 Q. WOULD YOU TURN TO THE THIRD PAGE OF THIS
24 EXHIBIT WHICH IS MARKED DL-TX-000992.

25 A. YES.

1 Q. OKAY. AND THAT'S THE \$11.25. THIS IS DATED
2 APRIL 8, 1997. DO YOU SEE THAT?

3 A. YES.

4 Q. OKAY. TAKE A LOOK BACK AT EXHIBIT NUMBER 621
5 WITH ME FOR A SECOND.

6 A. YES.

7 Q. AND TELL ME WHAT THE WAC IS FOR THE ALBUTEROL
8 25'S ON THIS PRICE LIST.

9 A. 11.25.

10 Q. SO IT CORRESPONDS WITH THE WAC THAT HAD BEEN
11 IN EFFECT AS OF APRIL OF 1997, CORRECT? I'M SORRY.
12 THE WAC THAT YOU -- THAT YOU WROTE -- HANDWRITED IN ON
13 THE APRIL 1997 PRICE LIST FROM MEDI-SPAN --

14 A. CORRECT.

15 Q. -- AND SENT BACK TO THEM.

16 A. CORRECT. I DON'T KNOW WHAT DATE THAT 11/25
17 BECAME EFFECTIVE.

18 Q. OKAY. I UNDERSTAND. BUT IT WAS CERTAINLY
19 EFFECTIVE BY THE TIME YOU WROTE IT IN AND SENT IT BACK
20 IN APRIL OF 1997, CORRECT?

21 A. IT MUST HAVE BEEN.

22 Q. ALL RIGHT. TAKE A LOOK WITH ME AT EXHIBIT
23 NUMBER -- AT EXHIBIT NUMBER 342, WHICH IS YOUR FAX TO
24 FIRST DATABANK.

25 A. YES.

1 Q. I WILL REPRESENT TO YOU THAT THE BLUEBOOK WAS
2 A -- AND YOU DESCRIBED THE BLUEBOOK AS A HARD COPY
3 RESOURCE AND I THINK THAT'S EXACTLY RIGHT, BUT I THINK
4 IT WAS OWNED BY FIRST DATABANK RATHER THAN REDBOOK.

5 A. OKAY.

6 Q. OKAY. SO I'LL JUST REPRESENT THAT TO YOU. I
7 THINK THAT'S WHAT THE EVIDENCE WILL SHOW. BUT WITH
8 THAT CLARIFICATION WHEN YOU SENT THIS FAX -- LET ME --
9 LET ME WITHDRAW THAT AND REPHRASE THAT. WHEN YOU WENT
10 THROUGH THIS FAX THAT YOU HAD GOTTEN FROM FIRST
11 DATABANK WHAT DID YOU USE IN ORDER TO MAKE THE
12 CORRECTION ON THESE PARTICULAR WACS OR WHAT -- WHAT
13 FIRST DATABANK REFERS TO AS WHOLESALE NET --

14 MR. WINTER: OBJECTION --

15 Q. (BY MR. FLECKMAN) -- FOR THESE VARIOUS
16 PRODUCTS THAT YOU -- THAT YOU PENNED IN AND INITIALED?

17 MR. WINTER: OBJECTION, FORM.

18 Q. (BY MR. FLECKMAN) LET ME REPHRASE THAT.
19 WHAT WERE YOU LOOKING AT IN ORDER TO CORRECT THESE
20 PRICES ON THIS FAX?

21 A. I MUST HAVE BEEN LOOKING AT INTERNAL PRICE
22 LISTS FOR BOTH WAC AND AWP.

23 Q. OKAY. NOW, IF -- IF YOU'RE THE ONE WHO IS
24 GENERATING THE PRICE LIST IN 1995, OR THEREABOUTS,
25 WHEN YOU SAY YOU WERE LOOKING AT INTERNAL PRICE LISTS,

1 WERE YOU LOOKING AT PRICE LISTS WHICH WERE IN EFFECT
2 PRIOR TO THE DATE ON WHICH YOU WERE WRITING THIS
3 INFORMATION? TAKE A LOOK -- TAKE A LOOK, FOR EXAMPLE,
4 LET'S BE SPECIFIC HERE, TAKE A LOOK AT THE THIRD PAGE
5 OF THIS -- I MEAN, THE FOURTH PAGE OF THIS -- FORGIVE
6 ME, THE FIFTH PAGE OF THIS EXHIBIT, WHICH IS -- WHICH
7 IS DL-TX-0090595.

8 A. YES.

9 Q. ALL RIGHTY. LET'S LOOK AT THE ALBUTEROLS
10 WHICH SEEM TO BE THE DRUG THAT'S IN ISSUE HERE IN THIS
11 CASE. YOU HAVE WRITTEN IN NOT ONLY A PRICE CORRECTING
12 THE ERRONEOUS PRICE HERE, BUT YOU'VE ALSO WRITTEN IN
13 AN EFFECTIVE DATE FOR EACH ONE OF THESE, CORRECT?

14 A. THAT IS CORRECT.

15 Q. OKAY. SO YOU WERE -- AT THE TIME THAT YOU
16 PREPARED THIS IN DECEMBER OF 1995 YOU WERE WORKING
17 FROM AN OLDER PRICE SHEET OR OLDER PRICE SHEETS
18 PLURAL, CORRECT?

19 A. IF OLDER -- I WOULD HAVE BEEN WORKING FROM
20 THE MOST RECENTLY PUBLISHED PRICE LIST AND IF OLDER
21 MEANS THAT IT WAS MOST RECENTLY UPDATED BEFORE
22 DECEMBER, YES.

23 Q. I SHOULD HAVE USED THE TERM PRE-EXISTING
24 PRICE LIST.

25 A. THAT IS CORRECT.

1 Q. OKAY. NOW -- AND YOU CANNOT EXPLAIN WHY THE
2 ERRONEOUS WAC WOULD BE IN THE FIRST DATABANK
3 SCHEDULES, I TAKE IT?

4 MR. WINTER: OBJECTION, FORM.

5 A. UNLESS OUR WAC WAS PREVIOUSLY LISTED AS 24.75
6 FOR THAT PARTICULAR ITEM AT ONE POINT AND, YOU KNOW,
7 PRIOR TO FEBRUARY 1ST AND THEN FEBRUARY 1ST PRICE OF
8 14.50 WENT IN THERE I DON'T KNOW IF THERE WAS OTHER
9 DROPS FROM 24.75 DOWN TO 14.50.

10 Q. WELL, LET ME REPRESENT TO YOU I THINK THE
11 EVIDENCE IS GOING TO SHOW THAT THE INTERNAL WAC OF DEY
12 DECLINED FROM \$24.90 TO \$18.95 ON FEBRUARY 1, 1995.
13 AND SO -- AND THAT IT WAS FURTHER REDUCED TO \$14.50 AS
14 OF MAY 1, 1995. I THINK THAT'S RIGHT. I STAND TO BE
15 CORRECTED BUT I BELIEVE THAT'S RIGHT.

16 MR. WINTER: OBJECTION, FORM.

17 Q. (BY MR. FLECKMAN) SO IF THAT'S THE CASE, CAN
18 YOU EXPLAIN WHY MS. BURNHAM WOULD HAVE REPORTED \$24.75
19 ON MAY 30, 1995 AFTER \$14.50 WAS ALREADY IN EFFECT?

20 MR. WINTER: OBJECTION, FORM.

21 A. NO.

22 Q. (BY MR. FLECKMAN) OKAY. BUT IN ANY EVENT,
23 YOU UNDERSTOOD THE POLICY AND PROCEDURE OF DEY TO BE
24 TO REPORT WAC CONSISTENTLY WITH THE ACCURATE INTERNAL
25 DEY WAC PRICES?

1 A. ABSOLUTELY.

2 Q. THAT -- THAT IS ALL I HAVE ON THE EXHIBITS.

3 LET ME GO THROUGH A FEW THINGS JUST TO CLARIFY. WHEN
4 YOU RECEIVED PRICES THROUGH DEBBIE BRONSTEIN OR
5 THROUGH HELEN BURNHAM DID YOU UNDERSTAND THAT THOSE
6 PRICES CARRIED THE APPROVAL OF THE UPPER EXECUTIVE
7 LEVEL OF DEY?

8 A. I DID.

9 Q. OKAY. AND THAT WOULD INCLUDE MR. MOZAK,
10 CORRECT?

11 A. IT WOULD.

12 Q. OKAY. AND GENERALLY ON YOUR GENERIC PRODUCTS
13 DID WAC DECLINE IN YOUR EXPERIENCE OR DID IT GO UP IN
14 YOUR EXPERIENCE?

15 A. IT DECLINED.

16 Q. OKAY. DO YOU RECALL ANY SITUATION WHERE
17 ANYONE, ANYONE EVER MENTIONED TO YOU AT DEY THAT IT
18 WAS THEIR INTENTION TO REPORT TO THE MEDICAID
19 AUTHORITIES AN ARTIFICIALLY INFLATED WAC THAT DID NOT
20 CORRESPOND WITH DEY'S ACTUAL WAC?

21 A. NO.

22 Q. WHEN YOU MADE YOUR REVIEW OF THE FIRST
23 DATABANK PRICES IN DECEMBER 1995, MS. GMEINER, WERE
24 YOU DOING THAT AS PART OF A ROUTINE REVIEW PROCESS
25 THAT YOU ENGAGED IN AT THAT TIME FOR THE UPDATING OF

1 PRICES OR WERE YOU DOING SOMETHING SPECIAL AND UNIQUE
2 BY REVIEWING THE FIRST DATABANK SCHEDULES?

3 A. IT WOULD HAVE BEEN SOMETHING ROUTINE FROM THE
4 PERSPECTIVE THAT WE EITHER HAD LAUNCHED -- WERE
5 LAUNCHING A NEW PRODUCT, A NEW SKU OR WERE CHANGING
6 THE PRICE OF ANY ONE OF THE PRODUCTS IN OUR LINE.
7 THAT IS TYPICALLY WHAT TRIGGERED OUR REVIEWING FROM
8 THE DATA BANKS' PRICING DATABASES, WHAT THEY HAD ON
9 FILE FOR THEIR PRICES VERSUS OUR PRICES.

10 Q. OKAY. THE -- I TAKE IT YOU DID NOT GET
11 INVOLVED GENERALLY IN THE MEDICAID ISSUES.

12 A. NO.

13 MR. WINTER: OBJECTION, FORM.

14 Q. (BY MR. FLECKMAN) I HAVE SEEN THE
15 NOMENCLATURE RX. WHAT DOES THAT MEAN WHEN IT APPEARS
16 ON THE DEY DOCUMENTS OR ON -- OR ON DATA REPORTING
17 SERVICE DOCUMENTS GENERALLY IN THE PHARMACEUTICAL
18 INDUSTRY?

19 A. THAT IT'S A PRESCRIPTION ONLY PRODUCT.

20 Q. OKAY. AND I HAVE SEEN ALTERNATIVELY THE
21 PHRASE TX ALSO ON THESE MATERIALS. WHAT DOES TX MEAN?

22 A. WELL, THAT -- TX TO ME MEANS TREATMENT. IT
23 CAN ALSO MEAN -- WELL, NO. TRX WOULD BE TOTAL
24 PRESCRIPTIONS. SO TX TO ME MEANS TREATMENT.

25 Q. THAT'S WHAT I THOUGHT IT MEANT. I JUST

1 A. IT'S POSSIBLE.

2 Q. HAVE YOU EVER SEEN SITUATIONS WHERE YOU SENT
3 OR BELIEVED THAT YOU HAD SENT INFORMATION TO A DATA
4 REPORTING SERVICE AND IT SIMPLY DID NOT GET REFLECTED
5 IN THEIR RECORDS FOR WHATEVER REASON?

6 A. I WOULD HAVE TO BELIEVE THAT YES, THAT DID --
7 THAT DID HAPPEN.

8 MR. FLECKMAN: OKAY. PASS THE WITNESS.

9 MR. WINGARD: WE'LL RESERVE QUESTIONS.

10 MS. TORGERSON: WARRICK AND SCHERING
11 WILL RESERVE ITS QUESTIONS AS WELL.

12 EXAMINATION

13 BY MR. WINTER:

14 Q. MS. GMEINER, I JUST HAVE A COUPLE OF
15 QUESTIONS ON REDIRECT BASED UPON WHAT MR. FLECKMAN HAS
16 ASKED YOU AND JUST TO GET CLARIFICATION BECAUSE HE
17 ASKED YOU JUST NOW ABOUT YOU PERSONALLY REPORTING
18 DEY'S PRICES TO AW -- DEY'S AWP AND WAC PRICES TO
19 VARIOUS STATES.

20 A. UH-HUH.

21 Q. AND I THOUGHT I UNDERSTOOD FROM YOUR PREVIOUS
22 TESTIMONY THAT YOU PERSONALLY DIDN'T MAKE THOSE
23 REPORTS, THAT SOMEBODY ELSE DID. CAN YOU CLARIFY THAT
24 FOR ME.

25 A. THERE IS A CHANCE THAT SOME FORM LETTERS WENT